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Attorneys for Respondent David K. Gottlieb, solely
in his capacity as Plan Administrator

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION, LOS ANGELES**

In re:

GEORGES MARCIANO, *et al.*,

Debtors.

Case No. 2:15-00444-CJC
USBC Case No.: 1:11-bk-10426-VK
Chapter 11

**DECLARATION OF JAMES K.T.
HUNTER IN SUPPORT OF
OPPOSITION TO ART PACK INC.'S
MOTION TO WITHDRAW
BANKRUPTCY REFERENCE WITH
RESPECT TO CONTESTED
MATTER**

ART PACK, INC.,

Movant,

v.

DAVID K. GOTTLIEB, Plan
Administrator under Confirmed Fourth
Amended Plan of Reorganization, as
Modified,

Respondent.

Date: February 23, 2015
Time: 1:30 p.m.
Ctrm.: 9B

DECLARATION OF JAMES K.T. HUNTER

I, James K.T. Hunter, declare and state as follows:

1. I am of counsel with the law firm of Pachulski Stang Ziehl & Jones LLP, counsel for David K. Gottlieb, solely in his capacity as Plan Administrator for the estate of Georges Marciano. I am duly licensed to practice in the state of California and before this Court.

2. This Declaration is submitted in support of the *Opposition To Art Pack Inc.'s Motion To Withdraw Bankruptcy Reference With Respect To Contested Matter* (the "Opposition"). Capitalized terms used but not defined in this Declaration have the meanings given to such terms in the Opposition. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and if called as a witness I could and would competently testify thereto.

3. On or about August 5, 2013, the Trustee, who had been appointed by the Bankruptcy Court to take control of the Marciano estate, filed an objection (the "Objection") to the unliquidated claim filed by Art Pack or about March 12, 2012. For the purposes of the Objection, the Trustee conceded liability and contended that the Art Pack Claim should be liquidated and allowed in the amount of approximately \$37,000 (which the Trustee understood at the time to be the total amount of documented fees and expenses incurred by or on behalf of Art Pack in defending the Underlying Action). The Plan Administrator now understands and concedes that the amount of documented fees and expenses incurred by or on behalf of Art Pack in connection with the Underlying Action is approximately \$85,000.

4. In response to the Objection, Art Pack filed a response (the "Response") and six supporting declarations, which Response sought a "summary judgment" allowing the Art Pack Claim in the amount of \$44 million of compensatory damages and between \$20 million and \$40 million of punitive damages. Alternatively, the Response requested that the Bankruptcy Court "set a prove-up hearing at the earliest

1 date on the Court's calendar" The Bankruptcy Court denied both requests to
2 liquidate the Art Pack Claim and set the matter for trial in April, 2014.

3 5. Immediately thereafter, Art Pack filed a Motion for Relief from the
4 Automatic Stay (the "Stay Motion"), asking the Bankruptcy Court to lift the automatic
5 stay to permit Art Pack to prosecute and liquidate the Art Pack Claim in the Long
6 Beach Branch of the Los Angeles Superior Court asserting, inter alia, that the Art
7 Pack Claim is a "personal injury" claim that cannot be adjudicated by the Bankruptcy
8 Court. In addition to pointing out that Art Pack was a corporation that could not
9 suffer personal injury, the oppositions to the Stay Motion highlight another telling
10 fact, namely, when it sued one of Marciano's law firms in the Superior Court for
11 malicious prosecution with respect to the Underlying Action (the "Browne Woods
12 Action"), the very same law firm that represents Art Pack in this matter stated under
13 penalty of perjury on the mandatory Civil Case Cover Sheet Addendum and Statement
14 of Location that the subject action fell into the category "Other Non-Personal
15 Injury/Property Damage Tort." The Bankruptcy Court denied the Stay Motion and, in
16 doing so, held that the Art Pack Claim is not a "personal injury" claim because the
17 claimant is a corporation.

18 6. Thereafter, the matter was tried by the Bankruptcy Court on April 10,
19 2014. At the close of trial, the Bankruptcy Court took the matter under submission.
20 In October of 2014, the Bankruptcy Court entered a number of evidentiary rulings, the
21 primary effect of which is to eviscerate Art Pack's claims for lost profits and punitive
22 damages. Subsequently, at a status conference held in the bankruptcy case on January
23 8, 2015, the Bankruptcy Court ordered Art Pack, the Plan Administrator and five
24 judgment creditors of Marciano (with allowed unsecured claims totaling \$86.25
25 million in principal amount) to mediate the disputes relating to the Art Pack Claim.
26 The parties have selected a mediator and a one-day mediation is presently set for
27 March 4, 2015. I anticipates that if the mediation is unsuccessful, the Bankruptcy
28 Court will rule on the matter shortly thereafter.

1 I declare under penalty of perjury under the laws of the United States of
2 America, that the foregoing is true and correct.

3 Executed this 2d day of February, 2015, at Los Angeles, California.

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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I, Mary de Leon, am employed in the city and county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067-4100.

On February 2, 2015, I caused to be served the **DECLARATION OF JAMES K.T. HUNTER IN SUPPORT OF OPPOSITION TO ART PACK INC.'S MOTION TO WITHDRAW BANKRUPTCY REFERENCE WITH RESPECT TO CONTESTED MATTER** in this action by placing a true and correct copy of said document(s) in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

- ☒ (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☒ (BY NOTICE OF ELECTRONIC FILING) I caused to be served the above-described document by means of electronic transmission of the Notice of Electronic Filing through the Court's transmission facilities, for parties and/or counsel who are registered ECF Users.
- ☒ (BY OVERNIGHT DELIVERY) By sending by overnight delivery to the addressee(s) as indicated on the attached list.

I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made.

Executed on February 2, 2015, at Los Angeles, California.

/s/ Mary de Leon
Mary de Leon

ADDITIONAL SERVICE LIST:

2:15-cv-00444-CJC Notice has been electronically mailed to:

- **Peter Alan Davidson**
pdavidson@ecjlaw.com, lpekrul@ecjlaw.com
- **Richard Kenneth Diamond**
jtedford@dgdk.com
- **Dennis M Elber**
elber@skes-law.com, daisy@skes-law.com, donnav@skes-law.com, arosado@skes-law.com
- **James K T Hunter**
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- **Jeremy V Richards**
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- **Donna Silver**
dsilver@skes-law.com
- **John N Tedford , IV**
jtedford@dgdk.com

2:15-cv-00444-CJC Notice will be sent via overnight mail to:

Honorable Cormac J. Carney
Ronald Reagan Federal Building and U.S. Courthouse
411 West Fourth Street, Courtroom 9B
Santa Ana, CA 92701-4516

2:15-cv-00444-CJC Notice will be sent via U.S. mail to:

Attys for Objector, Georges Marciano
Barney Given, Esq.
Loeb & Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, CA 90067